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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005-67; FAR Case 2013-010; Item VII; Docket 2013-0010,
Sequence 1]

RIN 9000-AM59

**Federal Acquisition Regulation; Contracting with Women-owned
Small Business Concerns**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to remove the dollar limitation for set-asides to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-owned Small Business Program.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER.]

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before [Insert date 60 days after FEDERAL REGISTER publication date] to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-67, FAR Case 2013-010, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2013-010". Select the link "Submit a Comment" that corresponds with "FAR Case 2013-010."

Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2013-010" on your attached document.

- Fax: 202-501-4067.
- Mail: U.S. General Services Administration,
Regulatory Secretariat Division (MVCB), ATTN:
Hada Flowers, 1800 F Street, NW., 2nd Floor,
Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-67, FAR Case 2013-010, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202-501-2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-67, FAR Case 2013-010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR, to implement section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239, which amended section 8(m) of the Small Business Act, (15 U.S.C. 637(m)). Section 8(m) of the Small Business Act sets forth the Procurement Program for Women-owned Small Business Concerns, which is the statutory authority for SBA's Women-owned Small Business Federal Contract Program. Section 1697 of the NDAA for FY 2013 amended section 8(m) by removing the dollar limitation for set-asides. The dollar limit (as increased for inflation-see FAR 1.109) for acquisitions in the manufacturing industries, was \$6.5 million or less (including options), and in the case of all other acquisitions, \$4 million or less (including options).

Pursuant to this statutory change and in conformance with the Small Business Administration's (SBA's) revised regulations at 13 CFR 127.503(a)(2) and 127.503(b)(2), (see SBA's interim final rule published in the Federal Register at 78 FR 26504, on May 7, 2013), this rule amends FAR 19.1505(b) and (c) by removing the dollar limitations on the anticipated award price of contracts to economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under

the WOSB Program. As a result, contracting officers may set aside acquisitions for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program at any dollar level above the micro-purchase threshold, provided the other requirements for a set-aside under the WOSB Program are met.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq. The

Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this interim rule is to remove language in the FAR that restricts set-asides to economically disadvantaged women-owned small business (EDWOSB) concerns and to women-owned small business concerns eligible under the women-owned small business (WOSB) Program, in industries that are underrepresented or substantially underrepresented by women-owned small business concerns. The dollar limits (as increased for inflation-see FAR 1.109) are currently \$6.5 million (including options) for acquisitions in manufacturing industries and \$4 million (including options) for all other acquisitions. The legal basis for this interim rule is section 1697 of the National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239, which amended the statutory limitations at section 8(m) of the Small Business Act, (15 U.S.C. 637(m)), by permanently removing these limitations.

Analysis of the Federal Procurement Data System from April 1, 2011 (the implementation date of the WOSB Program) through January 1, 2013, reveals there are approximately 26,712 WOSB concerns, including 131 EDWOSB concerns and 388 women-owned small business concerns eligible under the WOSB Program, that received obligated funds from Federal contract awards, task or delivery orders, and modifications to existing contracts. This interim rule may have a significant positive economic impact on EDWOSB concerns competing for contracting opportunities in industries determined by SBA to be underrepresented by women-owned small business concerns and may positively affect WOSB concerns eligible under the WOSB Program competing in industries determined by SBA to be substantially underrepresented by women-owned small business concerns, since removing the dollar threshold for set-asides under the WOSB Program will provide greater access to Federal contracting opportunities. However, this rule may have a negative effect on firms that are women-owned but are not WOSB Program participants and small businesses that are not owned by women (i.e., small business concerns that are not 51 percent owned and controlled by women), because those firms may now be excluded from competition on some acquisitions that could not be set aside for EDWOSB concerns or WOSB concerns eligible under the WOSB Program due to the dollar thresholds and now will be set aside.

This interim rule does not impose new recordkeeping or reporting requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives to the rule which would accomplish the stated objectives of the statute.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-67, FAR Case 2013-010), in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to avoid conflicting guidance between

the two primary regulations used by the Federal acquisition community to implement the WOSB Program, the Small Business Regulations and the FAR.

Section 1697 of the NDAA for Fiscal Year 2013 (Publ. Law 112-239) was enacted by Congress and became effective on January 2, 2013. In response to this statutory change, the Small Business Administration issued an interim final rule published in the Federal Register at 78 FR 26504, on May 7, 2013, amending 13 CFR 127.503(a)(2) and 127.503(b)(2) to remove the anticipated contract dollar thresholds for determining when the contracting officer may set aside a requirement for economically disadvantaged women-owned small business (EDWOSB) concerns and/or WOSB concerns eligible under the WOSB Program. As a result, the FAR must also be amended at 19.1505(b)(2) and 19.1505(c)(2) to remove the anticipated award thresholds for EDWOSB concerns and WOSB concerns eligible under the WOSB Program, in order to minimize the risk of disseminating conflicting guidance to the Federal acquisition community.

In addition, by issuing an interim rule that is effective upon publication, prior to the receipt of public comment, agencies can immediately begin taking advantage of having no dollar limitations for set-asides to EDWOSB or WOSB concerns eligible under the WOSB Program, as envisioned by section 1697.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subject in 48 CFR Part 19

Government procurement.

Dated: June 13, 2013

William Clark,
Acting Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

19.1505 [Amended]

2. Amend section 19.1505 by—

- a. Adding to the end of paragraph (b)(1) "and";
- b. Removing paragraph (b)(2);
- c. Redesignating paragraph (b)(3) as (b)(2);
- d. Adding to the end of paragraph (c)(1) "and";
- e. Removing paragraph (c)(2);
- f. Redesignating paragraph (c)(3) as (c)(2); and
- g. Removing from paragraph (g)(3) "appeal, that there are urgent" and adding "appeal, unless the head of the agency makes a written determination that urgent" in its place.

[BILLING CODE 6820-EP]

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